

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 15962 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE ANANT S.DAVE**

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Whether Reporters of Local Papers
1 may be allowed to see the
judgment ?

2 To be referred to the Reporter or
not ?

3 Whether their Lordships wish to see
the fair copy of the judgment ?

Whether this case involves a
substantial question of law as to
4 the interpretation of the
constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to
the civil judge ?

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**KAMLESH @ KAMO @ KALPESH S/O MULABHAI @ KUBERBHAI
SOLANKI - Petitioner(s)**

Versus

**COMMISSIONER OF POLICE AHMEDABAD CITY & 2 -
Respondent(s)**

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Appearance :

MR JK PARMAR for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 19/09/2005

ORAL JUDGMENT

1. The order of detention dated 01.06.2005 passed by the Commissioner of Police, Ahmedabad City is challenged in this petition under Article 226 of the Constitution of India on the ground that exercise of powers by the detaining authority under Sub-section 1 of Section 3 of the Gujarat Prevention of Antisocial Activities Act, (for short 'the PASA Act') 1985, is illegal and unconstitutional since it is violative of Article 21 and 22 of the Constitution of India.

2. The impugned order dated 01.06.2005 reflects five crimes registered with different police stations of Ahmedabad City for offences punishable under Sections 457, 380 and 114 of Indian Penal Code. It mentions about statements of witnesses about antisocial and criminal activities of the detainee, indulging into fist fighting, usage of

abusive language and showing weapons to the members of public, which cause disturbance of the public order. That by the aforementioned prejudicial activities of the detainee normal life of the public in the locality gets disturbed and, therefore when other remedies under ordinary law are not adequate, recourse is taken to invoke the powers under Sub-section 1 of Section 3 of PASA Act branding the petitioner as "dangerous person" as defined under Section 2(c) of the said Act.

The aforesaid reasoning, supplied to the detainee as per requirement of Sub-section 1 of Section 9 of the PASA Act.

Therefore, according to the detaining authority remedy under ordinary law is not sufficient to prevent the detainee from indulging into similar activities. The subjective satisfaction was arrived at, thought the detainee was in judicial custody that he may prefer bail application and on grant of such bail by the Competent court of law, he is likely to continue in such similar illegal activities in future

also and with a view to prevent him, according to the detaining authority this was sufficient material and therefore, the order of detention is passed.

3. The learned advocate for the petitioner has mainly relied upon two grounds for challenging the order of detention i.e. insufficiency of materials for arriving at the subjective satisfaction by the detaining authority for passing the order of detention, inasmuch as according to the learned advocate for the petitioner, no relevant or credible materials did exist by the detaining authority when it is observed and concluded that the detenue is in judicial custody and on grant of bail likelihood to indulge into similar illegal activities in future. Thus, due to lacks of credible material, the subjective satisfaction of the detaining authority is vitiated to that extent and therefore, the order of detention is required to be quashed and set aside.

In support of his submissions, the learned advocate has relied upon the decisions reported at **AIR 2000 SC 3675 in the case of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others.**

4. Mrs. Hansha B. Punani, learned Assistant Government Pleader has heavily relied upon the order of detention containing the grounds as well to substantiate her argument that there is reasonable materials before the detaining authority and the activities carried out by the detainee can be certainly said to be prejudicial, which may lead to ultimately disturbance of public order. She has also supported the order of detention on the ground that in view of various offences registered against the detainee, the detaining authority has taken into consideration the aspect of judicial custody, and, therefore, the order reasonably prognosis, according to her, the detaining authority has arrived at a subjective satisfaction that detainee is likely to indulge into similar activities on grant of bail by the Competent court of law,

therefore, she has submitted that the order of detention does not require any interference by this Court.

5. Considering rival submissions and on perusal of the record including the affidavit in reply, I am inclined to accept the first ground of the learned advocate for the petitioner. Though noticed, that detenue is in judicial custody, in the facts of the present case, when the detenue is in Court custody for alleged four offences registered against the detenue, an in no case bail was granted, the apprehension or the material relied upon, if any, by the detaining authority to arrive at the subjective satisfaction in absence of grant of any bail to the detenue it cannot be said that detaining authority has reached to subjective satisfaction and supplied its mind to the relevant and credible materials for arriving at a conclusion that on release of detenue from the custody, he is likely to continue in the similar prejudicial antisocial and/or criminal activities. Therefore, this is a case where the ratio laid down by the

Apex Court in the case of AIR 2000 SC 3675 in the case of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others is applicable in the present case.

6. In view of the above, it is clear that the subjective satisfaction of the detaining authority presupposes existence of credible and relevant materials on both the aspects about the detainee preferring bail application and on grant of such bail application by the competent court and sufficient material for arriving at subjective satisfaction. This conclusion and lastly even the existence of material for detainee continuing the similar criminal or antisocial activities prejudicial to the public order in future, in event of the detainee being released on bail by the court. Therefore, on these three counts it is evident that no relevant or credible material exist and particularly when the detainee is ordered to be enlarged on bail by the court of law, therefore to this extent there is a non-application of mind and no relevant material exist for arriving at the

subjective satisfaction by the detaining authority.

7. For the reasons recorded above, the order of detention dated 01.06.2005 passed by the respondent no.1 herein, is hereby quashed and set aside and the detenue Kamlesh @ Kamo @ Kalpesh S/o. Mulabhai @ Kuberbhai Solanki is ordered to be set at liberty forthwith, if not required by any other authority in any other offence.

8. Rule is made absolute, accordingly with no order as to costs. Direct Service is permitted.

(ANANT S. DAVE,

J.)amit